Supreme Court, U.S.
FILED
941465 DEC 21 1994
OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

ELI MASON ROBERTS

Petitioner

- versus -

KINGS COUNTY HOSPITAL, DR. MORRIS BINDER, DR. HANS OPPENHEIMER, KINGS PARK PSYCHIATRIC CENTER, DR. CHARLES BUCKMAN, DR. DEWITT C. BROWN, DR. GEORGE VOLOW, STATE OF NEW NEW YORK OFFICE OF MENTAL HEALTH, OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Protitioner, Pro-Se

ELI MASON ROBERTS
GENERAL POST OFFICE
BOX 601
NEW YORK, N.Y. 10001

56PP.

QUESTIONS PRESENTED FOR REVIEW

1

After filing a civil complaint on Monday, August 27, 1993 in the U.S. District Court For The Southern District Of New York, Kings Park Psychiatric Center and the New York Office Of Mental Health were the only two who responded and followed the Fedreal Rules Of Civil Procedure. Rule 4(c) (2) (c) (ii) by filling out the Notice And Acknowledge Of Receipt forms and returned them to me with the summonses I had served on them.

If a defendant does not respond within 20 days, judgement by default is suppose to be taken against the defendant.

The other defendants did not respond within 20 days, from Monday, August 27, 1993, which would been until Monday, September 17, 1993.

The Office Of The Attorney General did not respond until after 31 days on September 28, 1993. They did not follow the rules of Civil Procedure by filling out the Notice Of Acknowledgement Receipt form and mailing it to me along with the summons I had served on them. Instead, they responded to Judge McKenna and ignored me.

Later, the Assistant Corporation Counsel, Office Of The Corporation Counsel responded to Judge McKenna and ignored

me. They responded more than 30 days late and did not return the Notice Of Acknowledgement receipt form to me with the summons I had served on them.

The question here is why did the District Court allow these two defendants to violate the Federal Rules?

Was it because they are City and State agencies?

2

Why did the District Court refused to sign subpoenas to order Kings County Hospital, Kings Park Psychiatric Center and the New York Office Of Mnetal Health to provide the license numbers of Dr. Morris Binder; Dr. Hans Oppenheiner; Dr. Charles Buckman, a pedophile; Dr. DeWitt C. Brown and Dr. George Volow; so that I could send the numbers to the New York State Licensing Department to trace these criminal doctors or are they receiving pensions.

See EXHIBITS C and D in the MOTION FOR EXTENTION OF TIME BECAUSE OF POSTAL ERROR and also MOTION FOR THE ISSUANCE OF SUBPOENAS.

3

Why did the District Court refuse to consider the court hearings and ex-parte rulings about me that were intentionally concealed from me. I did not become aware of some of these hearings until 1989.

4

Why did the District Court refuse to sign subpoenas to order the defendants to make available to the Court all the fabricated records with my name on them.

5

Why did the District Court deny me a trial by jury. The District Court For The Southern District Of New York opened a "pro-se" office and has encouraged people for over twenty years to file cases with them as pro-ses with the help of their pro-se office. They promise that cases can be decided by a judge or a jury. When people choose juries, the District Court always dismiss the complaints. Next, the Second Circuit encourages people by letter to file appeals. After they do, the Second Circuit dismisses the cases. I have never known or heard of a pro-se being allowed to have a jury to decide a complaint. It seems as though the District and the Second Circuit is ripping people off only to make money.

6

Why did the U.S. Court Of Appeals For The Second Circuit affirm the errors of the District Court. One Circuit Judge stated that they did not want to go into the Constitutional authorities I used in my case.

LIST OF PARTIES

Petitioner, ELI MASON ROBERTS

Respondents, KINGS COUNTY HOSPITAL

DR. MORRIS BINDER

DR. HANS OPPENHEIMER

KINGS PARK PSYCHIATRIC CENTER

DR. CHARLES BUCKMAN, A PEDOPHILE

DR. DEWITT C. BROWN

DR. GEORGE VOLOW

NEW YORK OFFICE OF MENTAL HEALTH

OFFICE OF THE ATTORNEY GENERAL OF NEW YORK

TABLE OF CONTENTS

QUESTIONS PRESENTED I

LIST OF PARTIES IV

TABLE OF CONTENTS V

TABLE OF STATUTES AND AUTHORITIES VI

AUTHORITES USED IN CITATIONS VII

CITATIONS VIII

CITATIONS THAT WERE CITED IN THE CITATIONS
IN WRONGFUL IMPRISONMENT AND DEFAMATION IX

OPINICNS DELIVERED 1

STATEMENT OF JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ... 3

STATEMENT OF THE CASE 13

CITATIONS 16

CONCLUSION 31

APPENDEX – A

APPENDEX – B

TABLE OF STATUTES AND AUTHORITIES

Titles	Pages
FAIR NOTICE ACT	(5) (8) (13)
FOURTEENTH AMENDMENT	(6) (7) (13) (20)
AMENDMENT, ARTICLE IV	(6) (13)
AMENDMENT, ARTICLE V	(6) (13)
FAIR NOTICE ACT	(5) (6)
CPLR, CPLR 308, CPLR 309, 312	(7) (14) (10)
ARTICLE VI	(7)
AMENDMENT XIV, 1,	(7) (14) (20)
DUE PROCESS OF LAW	(3) (6) (7) (18) (21) (22) (23)
FOURTEENTH AMENDMENT	(22) (23) (25) (27)
FAIR NOTICE ACT	(5) (6) (8) (10)
ARTICLE III, OF THE CONSTITUTION	(8) (11)
ARTICLE I, SECTION 8	(8) (11) (12)
ARTICLE VI – 2	(8) (20)
AMENDMENT, ARTICLE I	(9) (11) (14)
THIRTEENTH ARTICLE	(9)
THIRTEENTH AMENDMENT OF THE CONSTITUTION 1 AND 2	(9)
§ 202, SERVICE OF PAPERS CPLR	(10)

SECTION 102, SUBDIVISION 5, OF THE MENTAL HYGIENE LAW ..... (10)

FAIR NOTICE ACT ..... (10)

ARTICLE III ..... (8) (11)

ARTICLE IV, SECTION 2 ..... (11)

ARTICLE I, SECTION 8 ..... (11) (12)

AMENDMENT, ARTICLE 1 ..... (11)

ARTICLE IV, SECTION 2 ..... (12)

ARTICLE I, SECTION 8 ..... (12) (26)

FIFTH AMENDMENT ..... (25)

FOURTEENTH AMENDMENT CLAUSES, ARTICLE IV, SECTION 2, and ARTICLE I, SECTION 8 ..... (12)

AUTHORITIES USED IN CITATIONS

14TH AMENDMENT —— in — TUMEY v. OHIO ..... (22)

4TH AMENDMENT —— in — COHEN v. HURLEY ..... (25)

CAL. STAT. 1860 P. 213; CAL. STAT. P. 636; CAL. STAT. 1933. P. 2005; SECTION 2615 —— in — EDWARDS v. CALIFORNIA ..... (25)

CITATIONS

Titles	Pages
CARNLEY v. COCHRAN, 369 U.S. 506 (196)	(14) (16)
MICHEL v. LOUISIANA, 350 U.S. 91, 100 (1955)	(14) (16)
GROBAN, 352 U.S. 330 (1957)	(14) (17)
WESTERN UNION TELEGRAPH COMPANY v. COMMONWEALTH OF PENNSYLVANIA (1961,) 368 U.S. 71. 82 S CT. 7 L. ED 139 (¶ 19. 01–1 [Z].).	(14) (18)
IN RE OLIVER, 333 U.S. 257, 68 S. CT. 499, 92 L. ED. 682 (1948).	(14) (20)
TUMEY v. OHIO, 273 U.S. 510 (1927)	(14) (22)
HANSON v. DENCKLER (1958) 357 U.S. 235, 78 CT 1228 2 L. ED 2D 1283 (¶¶4. 25 [4], 19–01[2], 99.08)...(14)(18)(23)	
HAINES v. KERNER (1972) 404 U.S. 519 92 S CT 594, 30 L. ED 2D 652	(15) (23)
KROLL v. SACKLER, NASSAU COUNTY, SUPREME COURT, 1989	(4)
DUPONT, GLORE FORGAN & CO., v. CHEN (41 NY2D 794, ON REMITTITUR, 58 AD 2D 789	(4)
CROSBY v. BUCHANAN. 90 U.S. 420, 23 WALL 420 L. 138..(24)	
COHEN v. HURLEY, 366 U.S. 117, S. CT. 954, 6 L. ED 2D 156 (1961).	(24)
EDWARDS v. CALIFORNIA, 314 U.S. 160, 62 S. CT. 164, 86 L. ED 119 (1941).	(10) (25)
SPAGUE v. THE PHILADELPHIA INQUIRER, SUPREME COURT OF PENNSYLVANIA. (1983).	(28)
RAMOS v. LIBERTY MUTUAL INSURANCE COMPANY (CA 5TH, 1980).	(30)

CITATIONS THAT WERE CITED IN THE CITATIONS IN WRONGFUL IMPRISONMENT AND DEFAMATION

BUTE v. ILLINOIS, 333 U.S. 640, –in– CARNLEY v. COCHRAN ..... (27) and in this booklet ..... (16)

HANSON v. DENCKLA (1958) 357 U.S. 235, 78. S E ET 1228, 2 L. ED 1283 (¶¶ 4.25 [4]. 19.01–1 [2]. 19. 08) –in– WESTERN UNION TELEGRAPH COMPANY v. COMMONWEALTH OF PENNSYLVANIA ..... (34) and in this booklet ..... (18)

EX PARTE TERRY, 128 U.S. 209. –in– IN RE OLIVER, 333 U.S. 257, 68 S. CT 499, L. ED. 682 (1948). ..... (40)

DIMES v. GRAND JUNCTION CANAL, 3H.L.C. 759; GREGORY v. RAILROAD, 4 O.S. 675; PEACE v. ATWOOD, 13 MASS. 324; TAYLOR v. COMMISSIONERS, 105 MASS. 225; KENTISH ARTILLERY v. GARDINER, 15 R.I. 296; MOSES v. JULIAN, 45 N.H. 52; STATE v. CRANE, 36 N.J.L. 394; RAILROAD COMPANY v. HOWARD. 20 MICH. 18; STOCKWELL v. TOWNSHIP, 22 MICH. 341 FINLEY v. SMITH, 42 W. VA. 299; NETTLETON'S APPEAL, 28 CONN. 268; WHEELINGS v. BLACK, 25 W. VA. 266, 280; PECK v. FREEHOLDERS OF ESSEX, 20 N.J.L. 457; EVANS v. GORE, 253 U.S. 245, 247; STUART v. MECHANICS' & FARMERS' BANK, 19 JOHNS, 496; RANGERS v. RAILROAD, H.L.C. 72 –in– TUMEY v. OHIO, 273 U.S. 510 (1927) ..... (43) and (44)

KONINGSBERG v. STATE BAR OF CALIFORNIA, 353 U.S. 252; SCHWARE v. BOARD OF EXAMINERS, 353, U.S. 232; CF. SLOCHOWER v. BOARD OF HIGHER EDUCATION, 390 U. S. 551–558; GRUNEWARD v. UNITED STATES, 353 U.S. 391, 421; TWINING v. NEW JERSEY, 211 U.S. 78; SNYDER v. COMMISSIONER OF MASSACHUSETTS, 291 U.S. 97, 105; BROWN v. MISSISSIPPI, 297 U.S. 278, 285; PALKO v. CONNECTICUT, 302 U.S. 319, 323, 324; ADAMSON v. CALIFORNIA, 332 U.S. 46; KNAPP v. SCHWEITZER, 357 U.S. 371, 374; SCOTT v. CALIFORNIA, 364 U.S. 471, (DISSENTING OPINION); O'NEAL v. VERMONT, 144 U.S. 323, 337, 366; PRUDENTIAL INSURANCE COMPANY v. CHEEK, 259 U.S. 530, 543; GITLOW v. PEOPLE OF THE STATE OF NEW YORK, 268 U.S. 652, 666; BEAUHARHAIS v. ILLINOIS, 343

U.S. 250, 288; ROTH v. UNITED STATES, 354 U.S. 476, 505 –506; SMITH v. CALIFORNIA, 361 U.S. 147, 169; WEEKS v. UNITED STATES, 232 U.S. 383, 398; WOLF v. COLORADO, 338 U.S. 25, 27–28; ELKINS v. UNITED STATES, 364 U.S. 206; HURTADO v. CALIFORNIA, 110 U.S. 516, 535; POWELL v. ALABAMA, 287 U.S. 45; UVEGES v. PENNSYLVANIA, 335 U.S. 437, 441; BETTS v. BRADY, 316 U.S. 445; McNEAL v. CULVER 365 U.S. 109, 117, (CONCURRING OPINION); OHIO EX REL EATON v. PRICE, 364 U.S. 263, 275, (DISSENTING OPINIONS); ROGERS v. RICHMOND, 365 U.S. 534; BRAM v. UNITED STATES, 168 U.S. 532; ROCHIN v. CALIFORNIA, 342 U.S. 165; BOYD v. UNITED STATES, 116 U.S. 616, 632; ULLMAN v. UNITED STATES, 350 U.S. 422, 426, 428. —in— COHEN v. HURLEY. ..... (66) to (80)

BALDWIN v. SEELIG, 294 U.S. 511, 523, (1935); SOUTH CAROLINA HIGHWAY DEPARTMENT v. BARWELL BROTHERS, 303 U.S. 177, 185, NOTE 2; MILK CONTROL BOARD v. EISENBERG FARM PRODUCTS, 306 U.S. 346, (1939); CITY OF NEW YORK v. MILN, 11 PET. 102, 103, 1937; PASSENGER CASES, 7 HOW. 283, 426 and 466, 467; MISSOURI, KANSAS AND TOPEKA RY. v. HABER, 169 U.S. 613, 629; 53 HOWARD L. REV. 1031, 1032. — in — EDWARDS v. CALIFORNIA .....(83) to (93)

OPINIONS DELIVERD

The United States District Court for the Southern District of New York filed its Memorandum Opinion and Order on March 14, 1994, is reprinted in Appendex – A.

The United States Court Of Appeals For The Second Circuit filed its unpublished Opinion and Order on October 6, 1994, is reprinted in Appendex – B.

STATEMENT OF JURISDICTION

The district Court denied me the right to bring my case to the Court before a jury and refused to sign subpoenas so that I could serve the defendants who are avoiding service. The District Court also refused to sign subpoenas to order the defendants to bring all fabricated records with my name on them to the Court so that I could examine them and show the Court that they are indeed fabricated. Lawrence McKenna, the District Judge, added more fabrications about me to my case by writing in his opinion that I had subsequently reported to a psychiatric clinic in Brooklyn, New York from 1965 until 1973. As this was not true, I lived and worked on two jobs in Newark, New Jersey, during that time and never went nowhere near Brooklyn.

I also informed both the District Court and the U.S. Court Of Appeals that there are no statute of limitations governing the psychiatric and or the mental health professions.

The U.S. Court of Appeals for the Second Circuit afirmed all of the opinions of the District Court on October 6, 1994, and this petition is being filed within the 90 days thereafter. The Court has jurisdiction pursuant to 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supreme Court Of The U.S., has jurisdiction to review this case. There are no opinions or decisions because the Second Circuit and the District Courts never reviewed carefully all of the authorities of this case and refused to recognized that there is no time-barred or a statute of limitation provisions in the psychiatric profession.

Both Courts abused their discretions, violated DUE PROCESS OF LAW OF THE FOURTEENTH AMENDMENT. The District Court denied me a fair tribunal and blocked me from subpoenaing defendants, so that I could serve a summons on each and take depositions from them.

The Judgement of the District Court was on March 14, 1994. The Docket Number is 93 CIVIL 6092.

The District Court and the Second Circiut was biased against me because I was pro-se. Thus the District Court ended up defending the defendants who were avoiding service. The District Court also was aware that Kings County Hospital, Kings Park Psychiatric Center and the New York Office Of Mental Health knew the whereabouts of Dr. Binder, Dr. Oppenheimer and Dr. Volow, and by not telling where they were, is considered as aiding defendants to avoid justice. See

KROLL v. SACKLER, NASSAU COUNTY, SUPREME COURT, 1989. A process server was stopped by a guard from entering a condominium complex to serve Sackler. Justice John S. Lockman ruled that the guard be served instead.

Service of this type has been specifically upheld, the Court Of Appeals, in DUPONT, GLORE FORGAN & CO., v. CHEN, (41 NY2D 794, ON REMITTITUR, 58 AD 2D 789. In the Chen case the security guard was acting upon the instructions of the defendant the process server was attempting to serve.

Ralph K. Winter, Dennis G. Jacobs and Jose A. Cabranes, Circuit Judges of the U.S. Court of Appeals made a ruling that favored the rulings of Lawrence M. McKenna, District Court Judge and James C. Francis IV, U.S., Magistrate Judge which denied me the right to bring my case to court and clear my name of all fabrications and defamations that were created by the defendants who are now avoiding justice.

– ii –

No motion by me was filed for a rehearing in the Second Circuit because of the unfair rulings from the Judges and the biased showed towards my case because I was pro–se.

– iii –

I followed the Federal Rules Of Judicial Procedures to give the defendants, Dr. Morris Binder, Dr. Hans Oppenheimer and

Dr. George Volow a fair notice of this complaint against them, but they probably know of this complaint and is avoiding service with the help of the defendants who has responded to the complaint. The present director of Kings Park Psychiatric Center has accepted the complaint for Dr. Charles Buckman, the pedophile. Dr. DeWitt C. Brown has accepted the complaint but has not responded.

The District Court and the Circuit Court is allowing these defendants to avoid service by not letting me use subpoenas and or Federal marshals at my expense to serve them. As these defendants are licensed to practice in the State Of New York, they can not hide forever.

– iv –

The Statutory provisions and authorities that confer on the Supreme Court Of The United States jurisdiction to review the judgements of the U.S. Court OF Appeals For The Second Circuit and the U.S. District Court For The Southern District Of New York by writ of certiorari are,

1) – FAIR NOTICE, page 30 of WRONGFUL IMPRISONMENT AND DEFEMATION. Kings County Hospital, Dr. Oppenheimer and Dr. Binder tricked me into a prison ward, initiated a court hearing against me while concealing it from me. They also denied me the right to contact my attorney who had an office nearby.

2) – 14TH AMENDMENT, page 32 in WRONGFUL IMPRISONMENT AND DEFAMATION. Judge Eilperin allowed Kings County, Dr. Binder and Dr. Oppenheimer to hold a secret trial, denying me the right to my attorney and the presence of my relatives. This action violated my RIGHT TO A PUBLIC TRIAL, guaranteed by the BILL OF RIGHTS. This action in January 1963, should have been rendered inadmissible under the FOURTEENTH AMENDMENT.

3) – AMENDMENT, ARTICLE IV, on page 32 in WRONGFUL IMPRISONMENT AND DEFAMATION. Kings County Hospital, Dr. Binder and Dr. Oppenheimer violated my rights under AMENDMENT, ARTICLE IV [persons to be secure from unreasonable seaches and seizures.]

4) – AMENDMENT, ARTICLE V, on page 32 in WRONGFUL IMPRISONMENT AND DEFAMATION. Kings County Hospital violated my rights by tricking me into giving them my private property. I was further deprived of life, liberty, and later had records fabricated against me without proof or DUE PROCESS OF LAW.

5) – FAIR NOTICE ACT, page 33 in WRONGFUL IMPRISONMENT AND DEFAMATION. My rights were violated under this Act when Kings County Hospital, Dr. Binder and Dr. Oppenheimer initiated an unlawful court hearing against me and never noti–

fied me. Judge George Eilperin allowed them to proceed and without asking for a defense from me and further violated my rights by making a ruling in favor of the criminal defendants 6) – CPLR, CPLR 308, CPLR 309, 312, page 35 in WRONGFUL IMPRISONMENT AND DEFAMATION. These authorities were violated when Kings County Hospital, Dr. Oppenheimer and Dr. Binder intentionally did not notify me about the unlawful court procedure initiated against me in January 1963.

7) – ARTICLE VI, page 36 in WRONGFUL IMPRISONMENT AND DEFAMATION. By allowing the criminal defendants to proceed, Judge Eilperin violated ARTICLE V1, [CONSTITUTION, LAWS, AND TREATIES OF THE UNITED STATES IS SUPREME,— 2.]

8) – AMENDMENT XIV, 1, page 36, WRONGFUL IMPRISONMENT AND DEFAMATION. Kings County Hospital, Dr. Binder and Dr. Oppenheimer violated this Amendment by creating their own laws which abridged my privileges and immunities while Dr. Oppenheimer is a foreigner living in the United States. These criminal defendants also deprived me of my life, liberty and property without DUE PROCESS OF LAW, as well as the equal protection of the laws..

9) – 14TH AMENDMENT, page 47, WRONGFUL IMPRISONMENT AND DEFAMATION, Judge Eilperin deliberately allowed Kings County Hospital, Dr. Binder and Dr. Oppenheimer to deny me

the right to my attorney, the right to defend myself and the right to have my attorney examine the sources of information in the fabricated medical certificate.

10) – FAIR NOTICE ACT, page 53, WRONGFUL IMPRISONMENT AND DEFAMATION. After I petitioned for a writ of habeas corpus, Kings Park Psychiatric Center. Dr. Charles Buckman, Dr. DeWitt C. Brown and Dr. George Volow concealed the notice from me and violated the FAIR NOTICE ACT with intent.

11) – ARTICLE III, page 55, WRONGFUL IMPRISONMENT AND DEFAMATION. My petition for a writ of habeas corpus was in standing as required by ARTICLE III, and demanded that Kings Park show cause why I was held in a prison ward.

12) – ARTICL I, SECTION 8, [PRIVILEGES OF CITIZENS. – 1] page 55, WRONGFUL IMPRISONMENT AND DEFAMATION. Kings Park Psychiatric Center, Dr. Buckman, Dr. Brown and Dr. Volow violated my rights under this Article by concealing the the hearing from me to appear before Judge Munder.

13) – ARTICLE VI – 2, page 56, WRONGFUL IMPRISONMENT AND DEFAMATION, Judge Munder violated the rules of his Court by allowing Kings Park Psychiatric Center, Dr. Buckman, Dr. Brown and Dr. Volow to violate ARTICLE VI [CONSTITUTION, LAWS, AND TREATIES OF THE UNITED STATES TO BE SUPREME. – 2.]

14) - AMENDMENT, ARTICLE I, [FREEDOM OF SPEECH AND RIGHT TO PETITION.] page 56, WRONGFUL IMPRISONMENT AND DEFAMATION. Judge Munder violated rules of his Court by not ordering my presence in his court so I could speak on my behalf and demand that the defendants show cause why I should not be released. The defendants violated my rights under this Amendment and Article by denying me to petition for an appeal of the order of Judge Munder.

15) - 13TH ARTICLE, page 57, WRONGFUL IMPRISONMENT AND DEFAMATION. I was tricked into involuntary serviitude which is forbidden by the 13TH ARTICLE.

16) - 13TH OF AMENDMENT OF THE CONSTITUTION 1 AND 2, 1. [Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisditions. 2. Congress shall have power to enforce this article by appropriate legislation.] page 59, WRONGFUL IMPRISONMENT AND DEFAMATION, By the staff at Kings Park Psychiatric Center encouraging me to do their work every day without pay was an unfair labor practice and a violation of the 13TH ARTICLE OF AMENDMENT OF THE CONSTITUTION.

17) - § 202. SERVICE OF PAPERS CPLR, page 61, WRONGFUL

IMPRISONMENT AND DEFAMATION. Kings Park Psychiatric Center, Dr. Charles Buckman, the New York Office Of Mental Health and the Office Of The New York Attorney General violated § 202, SERVICE OF PAPERS CPLR 308, CPLR 309, and CPLR 312 – A, by intentionally initiating a Court action about me and against me in 1964, while concealing the action from me. The defendants intentionally did not notify me about the Court action because they could not risk the possibility that I would launch an aggressive opposition against them.

18) – SECTION 102, SUBDIVISION 5, OF THE MENTAL HYGIENE LAW, page 63, WRONGFUL IMPRISONMENT AND DEFAMATION. Kings Park Center, Dr. Buckman, the Office Of Mental Health and the Office Of The Attorney General Of New York unlawfully, improperly with intent used SECTION 102 to violate my transient rights and fabricated records stating that I was a resident of Brooklyn while I had no fixed address in New York. See EDWARDS v. CALIFORNIA, the state used Section 2615 to violate Edwards' and Duncan's rights.

19) – FAIR NOTICE ACT, page 63, WRONGFUL IMPRISONMENT AND DEFAMATION. Kings Park Center, Dr. Buckman, the Office Of Mental Health and the Office Of The Attorney General Of New York violated the provisions of the FAIR NOTICE ACT. The medical certificate by Dr. Buckman and backed by the Office

Of Mental Health and The Attorney General was not in standing as required by ARTICLE III OF THE CONSTITUTION OF THE UNITED STATES. After the New York Court made an order against me, a deprivation of my Civil Rights had occured again.

20) - ARTICLE IV, SECTION 2, OF THE ORIGINAL CONSTITUTION OF THE UNITED STATES, was violated by the New York Court. Page 63, WRONGFUL IMPRISONMENT AND DEFAMATION.

21) - ARTICLE I, SECTION 8, [PRIVILEGES OF CITIZENS. - 1.] pages 63 and 64, WRONGFUL IMPRISONMENT AND DEFAMATION. My rights under this article was violated by Kings Park Psychiatric Center, Dr. Buckman, Dr. Brown, the New York Office Of Mental Health, the Office Of The Attorney General Of New York and Judge A. David Benjamin of the Supreme Court Of New York.

22) - AMENDMENT, ARTICLE 1, [FREEDOM OF SPEECH, AND RIGHT TO PETITION.] Page 64, WRONGFUL IMPRISONMENT AND DEFAMATION. All the defendants denied me the right to respond to the certificate created about me by Dr. Buckman, who also intentionally did not notify me about the proceedings.

23) - ARTICLE IV, SECTION 2, [THE CITIZENS OF EACH STATE SHALL BE ENTITLED TO ALL PRIVILEGES AND IMMUNITIES OF CITIZENS IN THE SEVERAL STATES.] Page 81, WRONGFUL

IMPRISONMENT AND DEFAMATION. After learning that I had just moved to Brooklyn, but was only in transient, all the defendants secretly proceeded to violate my privileges and immunities under ARTICLE IV, SECTION 2.

24) – ARTICLE I, SECTION 8, OF THE CONSTITUTION, delegates to the Congress the authority to regulate interstate commerce. And it is settled beyond question that the transportation of persons is "commerce", within the meaning of that provision.

25) – 14TH AMENDMENT CLAUSES; ARTICLE IV, SECTION 2; and ARTICLE 1, SECTION 8; page 97, WRONGFUL IMPRISONMENT AND DEFAMATION. As section 2615 was used to violate the 14TH AMENDMENT CLAUSES in EDWAEDS v. CALIFORNIA, all of the defendants used the New York Judicial System to violate 14TH AMENDMENT CLAUSES and abridged my privileges.

STATEMENT OF THE CASE

This is an appeal for errors from the United States Court Of Appeals For The Second Circuit and the United States District Court For The Southern District Of New York, founded upon the intentional refusal of the District Court to sign subpoenas to order the defendants Kings County Hospital, Kings Park Psychiatric Center, the New York Office Of Mental Health and the Office Of The Attorney General Of New York to make avaiable the license numbers of the defendants, Dr. Morris Binder, Dr. Hans Oppenheimer and Dr. George Volow so that they could be located through the Department Of Licensing Of New York to stand trial in the District Court for wrongful imprisoning and later defaming me with intent.

The Second Circuit and the District Court intentionally ignored the roles that Kings County Hospital, Dr. Binder and Dr. Oppenheimer played in my case.

Kings County Hospital, Dr. Binder and Dr. Oppenheimer intentionally violated my rights under the FAIR NOTICE ACT by not notifying me about the proceedings against me. Judge George Eilperin should have ruled that the medical certificate was inadmissible under the FOURTEENTH AMENDMENT. Kings County Hospital, Dr. Binder and Dr. Oppenheimer violated my rights under AMENDMENT, ARTICLE IV; AMENDMENT,

ARTICLE V; AMENDMENT XIV, 1; New York State CPLR, CPLR 308, CPLR 309 and CPLR 312. See CARNLEY v. COCHRAN, 369 U.S. 506 (1962). See MICHEL v. LOUISIANA, 350 U.S. 91, 100 (1955). See GROBAN, 352 U.S. 330 (1957). See WESTERN UNION TELEGRAPH COMPANY v. COMMONWEALTH OF PENNSYLVANIA, (1961,) 368 U.S. 71. 82 S CT. 7 L ED 139 (¶ 19. 01–1 [z].). See RE OLIVER , 333 U.S. 257, 68 S. CT. 499, 92 L. ED. 682 (1948). See TUMEY v. OHIO, 273 U.S. 510 (1927). See HANSON v. DENCKLA (1958) 357 U.S. 235, 78S CT 1228, 2 L ED 2D 1283 (¶¶ 4. [4], 19–01 [2], 19. 08). Therefore, by Kings County Hospital, Dr. Binder and Dr. Oppenheimer tricking me into being a prisoner.

The Second Circuit and the District Courts ignored the violations of my rights by Kings Park Psychiatric Center, Dr. Buckman, Dr. Brown, Dr. Volow, the New York Office Of Mental Health and the Office Of The Attorney General Of New York. The Second Circuit and the District Courts erred by refusing to let me subpoena all records showing my name so I could prove my assertions further. Just as Judge Munder allowed Kings Park Psychiatric Center, Dr. Buckman, Dr. Brown and Dr. Volow violate my rights under AMENDMENT, ARTICLE 1 [FREEDOM OF SPEECH, AND RIGHT TO PETITION] in 1963, today in 1994, the Second Circuit and the District Courts are

allowing the same violation to stand by denying me to subpoena or petition fabricated records about me that are false. See HAINES v. KERNER (1972) 404 U.S. 519 92 S CT 594, 30 L ED 2D 652. The Second Circuit and the District Courts also ruled that I can not clear my name and have the fabricated records destroyed, because my cause of action is time barred.

In the psychiatric profession, there is no such thing as time-barred or a statute of limitation. In Moore's Federal Practice-1988 edition, tells about a proposal put before the U.S. Congress to establish laws and guidelines for the psychiatric profession. After careful considerations, Congress refused to deal with the proposals and could not understand the psychiatric profession and considered it as an unadvanced science.

CITATIONS

CARNLEY v. COCHRAN, 369 U.S. 506 (1962).

The Court held the defendant was entitled to appointed counsel. Topics were whether petitioner intelligently and understandingly waive assistance of counsel. The record does not show the trial judge offered and petitioner declined. The Court's opinion was, presuming waiver from silent records is inadmissible. The record must show an allegation and evidence that an offer was made, but the accused intelligently and understandingly rejected counsel. Anything less is not a waiver. See BUTE v. ILLINOIS, 333 U. S. 640. See MOORE v. Michigan.

I, Eli Mason Roberts, did not commit a crime. But a false criminal record about me exist. Kings County Hospital, Dr. Binder and Dr. Oppenheimer should have offered a waiver for counsel to assist me against the criminal record they fabricated about me.

Although, I had an attorney, but the staff at Kings County refused to let me contact him. I was also refused the aid of a social worker in January 1963.

MACHEL v. LOUISIANA, 350 U.S. 91, 100 (1955).

Lack of competency of court appointed counsel and others with aurhority to detain people, was raised, as a basis for al-

leging that defendant received an unfair and unimpartial trial.

In my case, The staff at Kings County Hospital was more than incompetent in dealing with me and that should never be overlooked no matter how long ago it happened.

GROBAN, 352 U.S. 330 (1957).

This citation is similar to what all the defendants did by denying me the right to counsel. Groban was noncriminal. The question was whether witnesses have a Constitutional right to their counsel when compelled to testify before a fire marshal investigating the cause of a fire and had the power to detain the witness. The marshel jailed the witness for contempt and refusing to testify. Under state law the witness retained the right to not testify because of self-incrimination. All evidence taken was admissible in a later criminal proceeding. In a 5-4 decision the Court held the intent of the statute was to determine the cause of the fire, and not to interrogate or examine those suspected of crimse, the statute was constitutional. The holding appears to imply that secret investigations aimed at prosecution of people suspected of crimes will be declared unconstitutional. There is an administrative investigation that might uncover evidence leading to a criminal conviction in which no right to counsel exists.

In Anonymous Numbers 6 and 7 v. Baker, 30 U.S. 287

(1960) the Court held (over the dessents of the Chief Justice and Justic Black, Brennan and Douglas) that under the rule of Groban, a state judge conducting a judicial inquiriy into allegedly improper practices by attorneys could constitution-ally exclude counsel while questioning private investigators called as witnesses.

In my case, I never tesified to anything but the pain in my chest and never having an appetite. The staff at Kings County already knew what they were about to do to me because they were very well rehearsed from tricking others. What they did not know was that by being City officials, they were suppose to inform me about my rights and how I should have been offered an attorney because of the crminal records they fabricated about me.

WESTERN UNION TELEGRAPH COMPANY
- v -
COMMONWEALTH OF PENNSYLVANIA
(1961) 368 U.S. 71. 82 S CT. 7
L. ED 139 (¶ 19. 01-1 [Z].)

Conversely, a judgement that substantially affects rights of a non-joined indispensable party, or indispensable party whom the Court had no effective jurisdiction, violates DUE PROCESS OF LAW. See HANSON v. DENCKLA,(1958) 357 U.S. 235, 78 S CT 1228, 2 L. ED 1283 (¶¶4. 25 [4]. 19. 01-1 [2]. 19. 08).

In January 1963, I was considered a non-joined indispensi-

ble party as in WESTERN UNION v. COMMONWEALTH OF PENNSYLVANIA. The defendants, Kings County Hospital, Dr. Binder and Dr. Oppenheimer intentionally committed civil contempt by not getting information about me from Philadelphia, and present it to Judge Eilperin so that I could been in contact with my relatives. But Dr. Binder's and Dr. Oppenheimer's reason for not doing this was, they were busy using me and my name to gain credits for themselves at Kings County Hospital.

When an out of state individual becomes ill and ends up in any hospital, the hospital staff is suppose to follow hospital procedures by notifying the parents or other relatives in the state from where the individual came. But not trick the individual into being confined and rushing to a state court to send the dividual far away to an institution without ever notifying even the landlord at where the individual resided.

The Kings County staff prevented me from contacting anybody, on orders from Dr. Binder and Dr. Oppenheimer. When I did not show up within two weeks at the residence where I rented a room for $8. 00 a week, the landlady and her husband notified the police who never found me. However, they entered my room and found a letter from one of my brothers in Philadelphia. Though, nobody knew where I was until late

in February 1963, when the staff at Kings Park Psychiatric Center notified my relatives in Philadelphia, who then notified the landlady in Brooklyn that I was a prisoner at Kings Park. The landlady was astonished and wondered how could I be a prisoner when I did not commit a crime. I also was only an transient in Brooklyn until I would have inherit my father's estate in Philadelphia, then move to Paris and own a forign news and book store.

Kings County Hospital, Dr. Binder and Dr. Oppenheimer committed a gross violation of my Constitutional Rights. See authorities, ARTICLE VI, – 2, page 22 in this booklet. AMENDMENT XIV, – 1, pages 14, 15, 21, in this booklet and page 36 in WRONGFULL IMPRISONMENT AND DEFAMATION.

IN RE OLIVER, 333 U.S. 257, 68 S. CT. 499, 92 L. ED. 682 (1948).

This is another citation similar to my case, After being reviewed by the Supreme Court Of The United States, Justice Hugo L. Black delivered the opinion. In obedience to a subpoena petitioner appeared as a witness before a Michigan circuit judge who was conducting, in accordance with Michigan law, a "one–man grand jury" investigation into alleged gambling and official corruption. The investigation presumably was in the judges's chambers, which is not certain. Two other circuit judges were present with a prosecutor and

a stenographer, though that is not certain. The record shows no others, if any, of the judge's investigatorial staff in the proceedings.

After listening to the testimony, the judge told petitioner he and his advisors did not believe him because they had recently listened to the testimony of another witness in the same investigation whom the petitioner knew nothing about. The petitioner was immediately charged with contempt, convicted and sentenced to sixty days in jail. This action of secrecy and haste was a violation of petitioner's Constitutional rights. He had no right to counsel, no right to prepare a defense, no opportunity to cross examine the other witness and no right to summon witnesses to refute the charge against him. The U.S. Court ruled that a Grand Jury which is conducted in secrecy has no right to sentence and jail a witness without DUE PROCESS OF L AW. Also, grand juries have no power to sentence people in secrecy in the United States. Only a judge in an open municipal, state and Federal court can sentence people and send them to jail only after affording them DUE PROCESS OF LAW. Therefore, the judgement of the Michigan Supreme Court was reversed and the cause was remanded to it for disposition not inconsistent with the opinion. Reversed and remanded.

In my case, Kings County Hospital, Dr. Binder and Dr. Oppenheimer intentionally denied me DUE PROCESS OF LAW for two weeks.

TUMEY v. OHIO, 273 U.S. 510 (1927):

The petitioner was arrested, brought before Mayor pugh of North College Hill Village and charged with unlawfully possessing intoxicating liquor. Petitioner moved for dismissal because of disqualification of the mayor to try him under the 14TH AMENDMENT. The mayor denied the motion, convicted, fined for $100 and ordered that Petitioner be imprisoned until the fine with cost were paid. A city ordinance provided that in such cases the mayor "shall receive or retain [from convicted defendants] the amount of his cost in each case, added to his regular salery, as compensation for such cases." The Ohio Supreme Court affirmed the conviction and the late Chief Jusitice William Howard Taft, speaking for an unanimous Court, reversed. The problem was about officers acting in a judicial or quasi capacity are disqualified by their interest in the controversy to be decided is, of course, the general rule.

Kings County Hospital, Dr. Binder and Dr. Oppenheimer, an alien in America, were not and never were qualified to act as judges of people's fate and trick them into being prisoners.

This is what happened and my case should never be time-barred. There are no legal time provisions for licensed psychiatrists. Dr. Binder and Dr. Oppenheimer overstep their authorities to act and make decisions as judges and abridged my rights under the 14TH AMENDMENT in 1963. There is no such thing as a statute of limitation governing psychiatrists who act out of ther professions and abridge rights. The jurisdiction field is not for Kings County Hospital, Dr. Binder and Dr. Oppenheimer to enforce their brand of justice so they can excel to promotions and credits while abridging rights.

HANSON v. DENCKLA (1958) 357 U.S. 235, 78 S CT 1228, 2 L ED 2D 1283 (¶¶ 4. 25 [4]. 19-01 [2]. 19. 08).

Because of the acqaintanceship between Judge Munder, Kings Park Psychiatric Center, Dr. George Volow, Dr. Charles Buckman and Dr. DeWitt C. Brown, they intentionally would not let me attend a hearing I had petitioed and started for a writ of habeas corpus. Judge Munder dismissed my petition in violative of DUE PROCESS OF LAW. The judgement and decision substantially affected my rights under the Constitution. Because of this, I should be awarded monetory damages for the concealed proceedings I was unaware of until 1989.

HAINES v. KERNER (1972) 404 U.S. 519 92 S CT 594, 30 L ED 2D 652

In this citation, (Trial court erred in dismissing state in-

mate's pro-se complaint alleging deprivation of Civil Rights where the allegations, although inartfully drawn, were suffient to call for opportunity to present evidence on the claims).

When Kings Park Psychiatric Center, Dr. Buckman, Dr. Brown, and Dr. Volow concealed the proceedings from me for a writ of habeas corpus, they denied my right to appeal the dismissal by Judge Munder. My privileges and immunities under the Constitution were abridged with intent.

CROSBY v. BUCHANAN, U.S. VA. 1894 90
90 U.S. 420. 23 WALL. 420. 23 L. ED. 138.

It was ruled that a court of equity, deliberate concealment is equivalent to a deliberate falsehood.

Whatever Dr. Volow Told Judge Munder about why I was not brought to the court was a falsehood and perjury. However, Judge Munder did have the power to order Kings Park Psychiatric Center to bring me to his court and also make sure my rights were safeguarded.

COHEN v. HURLEY, 366 U.S. 117,
S. CT. 954, 6 L. ED. 2D 156 (1961).

A judge investigating ambulance chasing in Brooklyn, ordered Cohen to produce records and testify about a large number of contingent fee personal injury cases in which he had been counsel for the plaintiff. Cohen refused to comply on grounds of self incrimination. Cohen was warned of disci-

plinary action, but he still declind to comply. A petition was filed and the New York Court ordered his disbarment stating the basis was not the invoking of Cohen constitutional privileges against self incrimination, but not complying with the court to expose unethical practices. The New York Court Of Appeals affirmed the disbarment and the U.S. Court granted certiorari. Justice John M. Harlan delivered the opinion.

It seem to imply that the state can not go against the 14TH AMENDMENT to stop an individual from earning a living because of invoking his rights against self incrimination. Although, the interest of the state was considered. The decisions of the New York Courts were reversed.

In January 1963, the staff at Kings County Hospital downgraded and ignored the FIFTH AMENDMENT privileges against self incrimination by changing my complaint about chest pains and tried to get me to admit to criminal acts that never happened. Later the staff fabricated a criminal record about me. Thus they tricked me into being confined and prevented me from earning a living.

EDWARDS v. CALIFORNIA, 314 U.S. 160,
62 S. CT. 164, 86 L. ED. 119 (1941)

Justice James F. Byrnes delivered the opinion of the Court.

Appellant is a citizen of the United States and resident of of Maryville, California. In December, 1939, he went to Spur,

Texas, and brought back in his car to Maryville, his wife's brother, Fank Duncan, a citizen of the United States and a resident of Spur, Texas. Duncan obtained financial assistance from the Farm Security administration. For some reason, a complaint was filed against appellant under Section 2615 of the Welfare and Institutions Code of California, St. 1937, p. 1406, which provides: "every person, firm or corporation, or officer or agent thereof that brings or assist in bringing into the state any indigent person or is not a resident of the state, knowing him to be an indigent person, is guilty of a misdemeaner." On demurrer to the complaint, appellant urged that the Section violated several provisions of the U.S. Constitution. The demurrer was overruled, the case tried, appellant was convicted and sentenced to six months imprisonment in the county jail. The sentence was suspended. On appeal to the Superior Court of Yuba County, the conviction was affirmed. On appeal in the U.S. Court, Section 2615 was viewed from all sides, mainly on how no state can close its borders to the world and what kind of indigent people should be kept out. Those who have money to spend when arriving in the state or those who have nothing or who can not buy property or other items. All states are open by law to interstate commerce and falls under ARTICLE I, SECTION 8, OF

THE CONSTITUTION which delegates to the Congress the authority to regulate interstate commerce. It is settled that transportation of persons is commerce, within the meaning of that provision. All the Justices were of the opinion that Section 2615 imposes an unconstitutional burden on interstate commerce, and the conviction under it can not be sustained. Justice William O. Douglas, Justice Hugo L. Black, Justice Frank Murphy and Justice Robert H. Jackson joined in concurring that the conviction under Section 2615 abridged the privileges and immunities of Duncan under the 14TH AMENDMENT. The Justices further felt that California had no right to judge Duncan's purse, with no violation by him of any law and punishing one who extended him aid. Reversed.

I was 19 when I rented a room in Brooklyn. After I would have turned 21, I was suppose to inherit my father's estate. I had plans to move to Paris France and open a forign news and book store and earn a living from that. Because of the defendants tricking me into being a prisoner for two years and three months, I was unable to follow my plans and ended up living in Newark, New Jersey, then Montreal, Canada and Newark again until 1970. As in Edwards v. California, Kings Park Psychiatric Center and Dr. Buckman ordered me to leave the State Of New York, which I did. While living in

New Jersey, what I did not know was Dr. Buckman was still getting revenge on me for petitioning for a writ of habeas corpus. In 1964, Kings Park Psychiatric Center, Dr. Buckman, the New York Office Of Mental Health and the Office Of The Attorney General Of New York secretly filed a petition in the Supreme Court Of New York in Brooklyn and on September 28, 1964, Judge A. David Bejamin signed a declaration of incompetency against me for the State of New York. Thereafter, Kings Park, Buckman, the New York Office Of Mental Health and the Office Of The Attorney General Of New York fabricated my records for eight years and always referred to me as an incompetent residing in Brooklyn, while I resided in Newark.

SPRAGUE v. THE PHILADELPHIA INQUIRER
SUPREME COURT OF THE STATE OF PENNSYLVANIA
(1983). REVIEWED AND UPHELD BY THE APPELLANT
COURT. THE SUPREME COURT OF THE U.S. REFUSED
TO REVIEW THE CASE IN 1988.

In 1963, 4 men hanging out, one punched the other and he died. One of the men was the son of a state police captain in Pennsylvania. Richard A. Sprague was acting as chief of homicide in the district attorney's office. The death was deemed a justifiable homicide and the case was closed. In 1972, Sprague prosecuted a news reporter for the now defunct Evening Bulletin and the reporter was dismissed from

his job. The Inquirer hired the reporter immediately and assigned him to investigate the 1963 homicide. From then on, many article began to appear in the Inquirer about a friendship between the state police captain and Sprague. Also how the 1963 homicide was closed as a favor to the police chief.

Sprague file a libel suit in 1973, charging the Inquirer with bringing great harm to his career and personal life with unfair reporting. First tried in 1983, the jury agreed and awarded Sprague 4. 5 million dollars. The Inquirer appealed and won a new trial, because the judge in the first trial had not permitted reporters to testify about information gathered from unknown sources. In one article on April 1, 1973, Sprague's estranged wife explained that she thought Sprague fixed the case. After reviewing the case, the appellant court ruled that the jury had enough evidence to conclude that The Inquirer had defamed Sprague with reckless disregard of the truth.

During my conversation with the staff at Kings County Hospital about the pains in my chest, I was deliberately misquoted by the staff. After being tricked into being a prisoner, Dr. Binder and Dr. Oppenheimer fabricated a medical certificate along with other inaccuracies with actual malice knowing what they did was a deliberate and reckless falsehood. After I was transferred to Kings Park Psychiatric Center, all

the defendants intentionally suppressed evidence from the judges about me in secret court hearings about me, but were concealed from me so that the judges would not notice that I was in reality a sane person of sound mind.

At Kings Park Psychiatric Center, the defendants there defamed me because of my legal knowledge

RAMOS v. LIBERTY MUTUAL INSURANCE COMPANY
(CA 5TH, 1980) 615 F2D 334, CERT., DENIED (1981)
449 U.S. 1112, 101 S CT 921, 66 L ED. 2D 840

This citation is similar to what happened in my case because Liberty Mutual Insurance tried to conceal certain information from the court to weaken a damage suit. However, the judge allowed the attorney for the plaintiff to bring the information to court. Liberty Mutual appealed and lost.

In my case, Judge Munder allowed the criminal defendants to keep me and information about me from his court. From then on Kings Park Psychiatric Center, Dr. Buckman, Dr. Brown, Dr. Volow and later the New York Office Of Mental Health and the Office Of The Attorney General Of New York violated my rights until I had left the State Of New York on April 5, 1965. Thereafter, the defendants spent nearly nine years adding more lies to my records and started court proceedings against me while always referring to me as the incompetent who reside in Brooklyn, while I resided in Newark.

CONCLUSION

I, ELI MASON ROBERTS, the Petitioner–Appellant pro–se, spent twelve years researching constitutional laws and preparing this case and prays that my case be read and determind that the District Court and the U.S. Court Of Appeals be vacated and reversed to clear my name of all fabricated records.

I, The Petitioner–Appellant, prays for an order to remand this case back to the District Court so that the defendants can be brought to trial and answer for the reason they fabricated criminal records about me as an incompetent in Brooklyn while I was never a legal resident of that area, but I resided in Newark.

I, the Petitioner–Appellant, who was in transient from June, 1962 until January, 1963 in Brooklyn when the defendants tricked me into a prison ward and fabricated a criminal record about me stretching back to the 1940's. However, I was born on Friday, January 29, 1943 in the old Mercy Douglass Hospital in Philadelphia, Pennsylvania, and I was never in Brooklyn in the 1940's. I prays for an order to be compensated for the years 1963 until 1976 that I was a prisoner and later defamed through court proceedings I knew nothing nothing about.

On The Affidavits
DATED, NEW YORK, NEW YORK.
DECEMBER 16, 1994

Respectfully Submitted.

Eli Mason Roberts

ELI MASON ROBERTS,
Petitioner Appellant

ELI MASON ROBERTS
GENERAL POST OFFICE
BOX 601
NEW YORK, N.Y. 10001

Respondants

THE DIRECTOR
KINGS COUNTY HOSPITAL
COUNTY OF KINGS
BROOKLYN, NEW YORK. 12203

DR. MORRIS BINDER
KINGS COUNTY HOSPITAL
COUNTY OF KINGS
BROOKLYN, NEW YORK. 12203

DR. HANS OPPENHEIMER
KINGS COUNTY HOSPITAL
COUNTY OF KINGS
BROOKLYN, NEW YORK. 12203

ASSISTANT CORPORATION COUNSEL
OFFICE OF THE CORPORATION COUNSEL
100 CHURCH STREET
ROOM 6-P-38
NEW YORK. N.Y. 10007

THE DIRECTOR
KINGS PARK PSYCHIATRIC CENTER
KINGS PARK, SUFFORK COUNTY,
LONG ISLAND, NEW YORK. 11754

DR. CHARLES BUCKMAN
KINGS PARK PSYCHIATRIC CENTER
KINGS PARK, SUFFORK COUNTY,
LONG ISLAND, NEW YORK. 11754

DR. DEWITT C. BROWN
13 HARRIS STREET
MARBLEHEAD, MASSACHUSSETT. 01945

DR. GEORGE VOLOW
KINGS PARK PSYCHIATRIC CENTER
KINGS PARK, SUFFORK COUNTY
LONG ISLAND, NEW YORK. 11754

COMMISSIONER
STATE OF NEW YORK OFFICE OF MENTAL HEALTH
44 HOLLAND STREET
ALBANY, NEW YORK. 12205

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW
STATE OF NEW YORK
120 BROADWAY
NEW YORK, N.Y. 10271

APPENDIX – A

MEMORANDUM AND ORDER

by

LAWRENCE M. McKENNA

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ELI MASON ROBERTS
Paintiff

-against-

93 Civ. 6092 (LMM)

KINGS COUNTY HOSPITAL, DR. MORRIS BINDER, DR. HANS OPPENHEIMER, KINGS PARK STATE HOSPITAL, DR. CHARLES BUCKMAN, DR. DEWITT C. BROWN, DR. GEORGE VOLOW, DEPARTMENT OF MENTAL HYGIENE, ATTORNEY GENERAL OF THE STATE OF NEW YORK,
Defendants.

MEMORANDUM AND ORDER

----------x

McKENNA, D.J.

Plaintiff Eli Mason Roberts filed this action on August 27, 1993. Although, it is not entirely clear from plaintiff's 151 page Complaint, Plaintiff appears to assert a claim pursuant to 42 U.S.C. § 1983, as well as a pendant state claim on the grounds of defamation. Plaintiff seeks $3 billion dollars in damages. Defendants Kings Park Psychiatric Center (sued as Kings Park State Hospital) ("kings Park"), the New York Office Of Mental Health (sued as the Department Of Mental Hygiene), and the Attorney General Of The State Of New York, for themselves and on behalf of Drs. Buckman, Brown and Volow, move, pursuant to Rule 12 (b) (1) and (6) of the Federal Rules of Civil Procedure, to dismiss the complaint as against them. Defendant Kings County Hospital ("Kings

County") moves this Court, pursuant to Rule 12 (b) (6), to dismiss the Complaint as against it. Defendant Kings County asserts, upon information and belief, that Drs. Binder and Oppenheimer have not been served. For the reasons set forth below, Defendants' motions are granted and the Complaint as against the moving Defendants is dismissed in its entirety; in addition, in the interest of justice, the Complaint is also dismissed in its entirety as against Drs. Binder and Oppenheimer.

I.

Construing all well-pleaded factual allegations in the Complaint in Plaintiff's favor, see Allen v. Westpoint-Pepperell, Inc., 945 F 2d 40, 44 (2d Cir. 1991), the facts are as follows. The gravamen of Plaintiff's Complaint is that he was wrongly institutionalized for mental illness, and was the victim of a conspiracy by Defendants to have him adjudged incompetent. At some time near the end of 1962, Plaintiff went to Kings County, a complex made up of a large number of buildings, ostensibly to seek treatment for chest pains and eating disorders. Confused by the vast number of buildings at the complex, Plaintiff inadvertently entered the psychiatric hospital building. Upon explaining to an attendant (Plaintiff is unsure whether this individual was a doctor) his reason for being

there, Plaintiff was tricked into admitting himself to the psychiatric unit. Defendants subsequently conspired to falsify documents and fabricate testimony in order to have Plaintiff adjudged incompetent and prevent him from asserting his rights to contest this judicial finding. Plaintiff was institutionalized until his release from Kings Park on December 23, 1966. Plaintiff subsequently received after-care treatment. On February 8, 1973, a Declaration of Competency Order was entered by the Supreme Court of the State of New York, Kings County, adjudging Plaintiff competent. The latest date referenced by Plaintiff in his complaint is his discovery, in 1989, of a letter that, he alleges, demonstrates that Defendant Volow committed perjury in a court proceeding concerning Plaintiff.

For the purpose of resolving the instant motions, a lengthy explication of the facts alleged in Plantiff's voluminous Complaint is unnecessary. The Court simply touches on the main points underlying the Complaint in order to provide a context for the resolution of the action.

II.

In the course of resolving a motion to dismiss pursuant to Rule 12(b)(6), the Court must read the complaint generously, accepting the truth of, and drawing all reasonable inferences from, the complainant's well-pleaded allegations. See

California Motor Transp. v. Trucking Unlimited, 404 U.S. 508, 515 (1972); 404 U.S. 508, 515 (1972); accord Brass v. American Film Technologies, Inc., 987 F. 2d 142, 150 (2d Cir. 1993); Allen v. Westpoint-Pepperell, Inc., 945 F. 2d 40, 44 (2d Cir. 1991); Cortec Indus., Inc. v. Sun Holding L.P., 949 F. 2d 42, 47-48 (2d Cir. 1991), cert. denied, 112 S. Ct. 1561 (1992); Frasier v. General Elec. Co., 930 F. 2d 1004, 1007 (2d Cir. 1991). Defendants are entitled to dismissal for failure to state a claim only if the Court finds beyond a doubt that "plaintiff can prove no set of facts" to support the claim that plaintiff is entitled to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

B.

In disposing of the instant motions, this Court views Plaintiff's papers with the "special solicitude" traditionally given pro se plaintiffs, see, e.g., McDonald v. Criminal Court Supervisor Officer, 850 F. 2d 121, 124 (2d Cir. 1988). Section 1983 of Title 42 of the United States Code in part provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress.

Plaintiff alleges violations of numerous rights guaranteed to him by the Constitution and Fedreal law.

Defendants contend, inter alia, that Plaintiff's Complaint is barred by the applicable statute of limitations, and, moreover, that it does not comport with Rule 8 (a) of the Federal Rules of Civil Procedure. A Federal court in New York deciding a § 1983 claim must use the three-year statute of limitations for personal injuries codified in N.Y. Civ. Prac. L. & R. § 214 (2) (McKinney 1990). Owens v. Okure, 488 U.S. 235, 251 (1989). Plaintiff's pendent state defamation claim is subject to a one year limitation. N.Y. Civ. Prac. L. & R. § 215 (3) (McKinney 1990). New York law contains a tolling of the statute limitations for a disability because of insanity. Id. § 208. Section 208 provides that for claims with a limitation of three years or more, the time to commence the action is extended to three years after the disability ceases; for claims with a limitation less than three years, the time to commence the action is extended by the period of the disability. In neither case, however, shall the time in which an action may be commenced be extended more than ten years after the cause of action accrues. Rule 8 (a) of the Federal Rules of Civil Procedure requires that the Complaint "shall contain ... a short and plain statement of the claim showing that the

pleader is entitled to relief ...." Fed. R. Civ. P. 8 (a).

III

Plaintiff's Complaint is time–barred. Plaintiff's § 1983 cause of action commenced at an unspecified date near the end of 1962. The latest event referenced in the complaint is Plaintiff's discovery, in 1989, that perjury had been committed by one of the Defendants, to Plaintiff's detriment, at some time in the past. Plaintiff was declared legally competent on February 8, 1973. Even assuming that Plaintiff was actually insane during the period he was held to be incompetent — an assumption that flies in the face of Plaintiff's entire cause of action — Plaintiff's § 1983 claim cannot lie. First, Plaintiff did not commence this action within three years of February 8, 1973, when the statutory toll, assuming it applied, ended. Second, Plaintiff did not commence the action within ten years after the cause of action accrued. For the same reason, Plaintiff's pendent state claim cannot lie.

Even assuming, without so holding, that Plaintiff's Complaint could also be tolled by a lack of knowledge prior to his discovery of Volow's alleged perjury, Plaintiff's Complaint was not filed within three years of the discovery, and, therefore, such a tolling, were it to apply, would not salvage Plaintiff's action.

IV.

For the foregoing reasons, Defendants' motions to dismiss

are granted and the Complaint as against the moving Defendants is dismissed in its entirety; in addition, in the interests of justice, the Complaint is also dismissed in its entirety as against Drs. Binder and Oppenheimer.

Dated : New York, New York
March 14, 1994

SO ORDERED

LAWRENCE M. McKENNA
U.S.D.J.

Plaintiff's Complaint also fails to conform to Rule 8 (a). Even in light of the "special solicitude," noted SUPRA, traditionally accorded pro se litigants, Plaintiff's massive Complaint is anything but concise, and runs far afield of the requirements of Rule 8(a). The Court declines to address Defendants' other arguments, including their Eleventh Amendment defense, given that the foregoing analysis is dispositive.

APPENDEX – B

AFFIRMATION

BY

RALPH K. WINTER

DENNIS G. JACOBS

JOSE A. CABRANES

UNITED STATES JUDGES

FOR THE SECOND CIRCUIT

RKW

SDNY
93-CV6092
McKENNA

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit held at the United States Courthouse in the City of New York, on the 6th day of October, one thousand nine hundred and ninety-four.

Presents:

Honorable Ralph K. Winter,
Honorable Dennis G. Jacobs,
Honorable Jose A. Cabranes,
Circuit Judges.

ELI MASON ROBERTS,
Plaintiff-Appellant

v.

ORDER
94-7373

KINGS COUNTY HOSPITAL, MORRIS BINDER, DOCTOR, HANS OPPENHEIMER, DOCTOR, KINGS PARK STATE HOSPITAL, CHARLES BUCKMAN, DOCTOR, DEWITT C. BROWN, DOCTOR, GEORGE VOLOW, DOCTOR, DEPARTMENT OF MENTAL HYGIENE, ATTORNEY GENERAL OF THE STATE OF NEW YORK,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgement of said District Court be and it hereby is affirmed.

Eli nason Roberts appeals from the dismissal by Judge McKenna of his complaint alleging claims for violation of 42 U.S.C. § 1983 and for defamation. We affirm for substantially the reasons stated by the District Court. See Roberts v. Kings County Hosp., No. 93 Civ. 6092, 1994 U.S. Dist. LEXIS 2933 (S.D.N.Y. Mar. 14, 1994).

Following "the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief," Conley v. Gibson, 355 U.S. 41, 45-46 (1957), and viewing Roberts with the "special solicitude that this Court has shown to pro se litigants," McDonald v. Head Criminal Court Supervisor Officer, 850 F. 2d 121, 124 (2d Cir. 1988), we find that Roberts's claims are time-barred.

N.B THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDREAL REPORTER AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN THE UNRELATED CASES BEFORE THIS OR ANY OTHER COURT

Hon. Ralph K. Winter, U.S.C.J.

Hon. Dennis G. Jacobs, U.S.C.J.

Hon. Jose A. Cabranes, U.S.C.J.